

REMARKS

This paper is presented in response to the Office Action. Claims 1, 15, 25, and 32 are amended and new claims 42-46 are added. Claims 1-46 are now pending in view of the aforementioned new claims.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

Applicant notes that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicant, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

II. Rejection of Claims 32 and 33 under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claims 32 and 33 under 35 U.S.C. § 112, Second Paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In view of the amendment herein to claim 32, Applicant respectfully submits that the rejection of claims 32 and 33 has been overcome and should be withdrawn.

III. Rejection of Claims 1-3, 6, 9, 10, 13-16, 19, 20, 23-25, and 27-33 under 35 U.S.C. § 102(e)

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP § 2131.*

The Examiner has rejected claims 1-3, 6, 9, 10, 13-16, 19, 20, 23-25, and 27-33 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2002/0149821 to Aronson et al. (“*Aronson*”).¹ Applicant respectfully disagrees and submits that for at least the reasons outlined below, the rejection of those claims should be withdrawn.

Particularly, independent claims 1 and 15 have been amended herein to recite that “the optical detector has first and second operating modes such that in the first operating mode, the optical detector is configured to operate in connection with LED-generated optical signals, and in the second operating mode, the optical detector is configured to operate in connection with laser-generated optical signals.[”] *Emphasis added.* Additionally, claim 25, and new claims 43-45, each recite that “the optoelectronic transceiver capable of interoperating with a first other transceiver utilizing laser based transmitters and respective receivers and the optoelectronic transceiver also capable of interoperating with a second other transceiver utilizing LED based transmitters and respective receivers.”

Support for the aforementioned amendments and new claims can be found in the specification at least at page 2, lines 24-28, page 11, lines 20-25, and page 12, lines 3-4. In contrast, the Examiner has not established that *Aronson* teaches, or even suggests, such transceivers.

Inasmuch as the Examiner has not established that the identical invention is shown in *Aronson* in as complete detail as is contained in claims 1, 15, and 25, and because the Examiner has not shown that *Aronson* discloses the elements of claims 1, 15, and 25 arranged as required by those claims, Applicant respectfully submits that the Examiner has not established that *Aronson* anticipates claims 1, 15, and 25. For at least the foregoing reasons, Applicant respectfully submits that the rejection of claims 1, 15, and 25, as well as the rejection of corresponding dependent claims 2, 3, 6, 9, 10, 13, 14, 16, 19, 20, 23, 24, and 27-33, should be withdrawn.

IV. Rejection of Claims 1, 2, 9-15, 19, 20-24, 27, 30, 35 and 38 under 35 U.S.C. § 103(a)

Applicant respectfully notes at the outset that in order to establish a *prima facie* case of obviousness, it is the burden of the Examiner to demonstrate that three criteria are met: first, there must be some

¹ Because *Aronson* is only citable under 35 U.S.C. § 102(e), Applicant does not admit that *Aronson* is in fact prior art to the claimed invention but reserves the right to swear behind *Aronson* if necessary to remove it as a reference.

suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP § 2143.*

a. **claims 1, 2, 9, 10, 11, 13-15, 19, 20, 21, 23, 24, 27 and 35**

The Examiner has rejected claims 1, 2, 9, 10, 11, 13-15, 19, 20, 21, 23, 24, 27 and 35 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,629,638 to Sanchez (“*Sanchez*”) in view of U.S. Patent No. 6,554,492 to Gilliland et al. (“*Gilliland*”). Regarding claim 35, Applicant assumes that the rejection of that claim is in error since the Examiner has allowed claim 35 (see V, below). Applicant accordingly submits that the rejection of claim 35 should be withdrawn. As to the rejection of the remaining claims, Applicant respectfully disagrees and submits that for at least the reasons outlined below, the rejection of those claims should be withdrawn.

As discussed at III. above, independent claims 1 and 15 have been amended herein to recite that “the optical detector has first and second operating modes such that in the first operating mode, the optical detector is configured to operate in connection with LED-generated optical signals, and in the second operating mode, the optical detector is configured to operate in connection with laser-generated optical signals.¹ *Emphasis added.* Additionally, claim 25 has been amended to recite that “the optoelectronic transceiver capable of interoperating with a first other transceiver utilizing laser based transmitters and respective receivers and the optoelectronic transceiver also capable of interoperating with a second other transceiver utilizing LED based transmitters and respective receivers.”

However, the Examiner has not established that either *Sanchez* or *Gilliland* teaches, or even suggests, such an arrangement. Thus, even if the purported teachings of *Sanchez* and *Gilliland* are combined in the allegedly obvious fashion advanced by the Examiner, the resulting combination fails to include all the limitations of claims 1, 15, and 25.

By virtue of their dependence from one of independent claims 1, 15 and 25, dependent claims 2, 9, 10, 11, 13, 14, 19, 20, 21, 23, 24, and 27 also include all of the limitations of the corresponding independent claim. Thus, even if *Sanchez* is modified by *Gilliland* in the purportedly obvious fashion advanced by the Examiner, the resulting combinations nonetheless fail to include all the limitations of those dependent claims.

For at least the foregoing reasons, Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 1, 2, 9, 10, 11, 13-15, 19, 20, 21, 23, 24, 27, and 35, and the rejection of those claims should accordingly be withdrawn.

b. claims 12, 22, 30 and 38

The Examiner has rejected claims 12, 22, 30 and 38 under 35 U.S.C. § 103 as being unpatentable over *Sanchez* in view of *Gilliland* and further in view of U.S. Patent No. 5,680,060 to Banniza et al. (“*Banniza*”). Regarding claim 38, Applicant assumes that the rejection of that claim is in error since the Examiner has allowed claim 38 (see V. below). Applicant accordingly submits that the rejection of claim 38 should be withdrawn. As to the rejection of the remaining claims, Applicant respectfully disagrees and submits that for at least the reasons outlined below, the rejection of those claims should be withdrawn.

As discussed at IV.a., the Examiner has not established that either *Sanchez* or *Gilliland* teaches, or even suggests, any of the arrangements recited in independent claims 1, 15, or 25, as those claims have been amended herein. Moreover, it appears that the Examiner has cited *Banniza* simply to show a digital to analog converter comprising a transistor. Such disclosure does not cure the deficiencies of *Sanchez* and *Gilliland*, discussed previously. Thus, even if *Sanchez* is modified by *Gilliland* and *Banniza* in the purportedly obvious fashion advanced by the Examiner, the resulting combinations fail to include all the limitations of the claims 1, 15, or 25.

By virtue of their dependence from one of independent claims 1, 15 and 25, dependent claims 12, 22, and 30 also include all of the limitations of the corresponding independent claim. Thus, even if *Sanchez* is modified by *Gilliland* and *Banniza* in the purportedly obvious fashion advanced by the Examiner, the resulting combination also fails to include all the limitations of those dependent claims.

For at least the foregoing reasons, Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 12, 22, 30, and 38, and the rejection of those claims should accordingly be withdrawn.

V. Allowable Subject Matter

The Examiner’s allowance of claims 34-41 is appreciated. Applicant wishes to thank the Examiner for the careful review and allowance of those claims.

Applicant submits the following comments concerning the Examiner’s statements of reasons for the indication of allowable subject matter in the Office Action. In general, Applicant agrees with the Examiner that the inventions to which claims 34-41 are directed are patentable over the cited references, but respectfully disagrees with the Examiner’s statement of reasons for allowance as set forth in the Office Action.

Particularly, Applicant submits that it is improper to characterize a single limitation, or subset of limitations, as constituting the basis for allowance of a claim. Rather, the patentability of a claim is

properly determined with reference to the claim as a whole. Accordingly, Applicant does not concede that the reasons for allowable subject matter given by the Examiner are the only reasons that make, or would make, the claim allowable and Applicant does not make any admission or concession concerning the Examiner's statements in the Office Action concerning the allowability of claims 34-41 in view of the cited references.

The Examiner has indicated that claims 4, 5, 7, 8, 17, 18, and 26 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As discussed above, Applicant believes amended independent claims 1, 15 and 25 are patentably distinct from the cited art. Claims 4, 5, 7, 8, 17, 18, and 26 each depend from one of independent claims 1, 15, and 25, and thus incorporate the limitations thereof. As such, Applicant believes claims 4, 5, 7, 8, 17, 18, and 26 are also patentably distinct from the cited art for at least the same reasons set forth above in the discussion of claims 1, 15 and 25. Allowance of each of these claims is thus respectfully requested.

VI. New Claims 41-46

By this paper, Applicant has added new claims 42-46. Of these, claims 43-45 are believed to be allowable for at least the reasons outlined herein. Further, new claims 42 and 46 depend from claim 34, indicated by the Examiner to be in allowable condition, and, accordingly, are likewise believed to be in allowable condition.

CONCLUSION

In view of the remarks submitted herein, Applicant respectfully submits that each of the pending claims 1-46 now pending in this application is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 14th day of December, 2005.

Respectfully submitted,



Peter F. Malen Jr.
Attorney for Applicant
Registration No. 45,576
Customer No. 022913
Telephone: (801) 533-9800